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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184197
Party	Plaintiff United Parcel Service of America, Inc.
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UNITED PARCEL SERVICE OF AMERICA, INC.,	:	
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Opposer,	:	Opposition No. 91184197
	:	
v.	:	
	:	
POWERTECH INDUSTRIAL CO., LTD.,	:	
	:	
Applicant.	:	
	:	
	X	

**REPLY BRIEF IN SUPPORT OF
OPPOSER’S MOTION TO AMEND**

Pursuant to Section 2.127(a) of the Trademark Rules of Practice, Opposer United Parcel Service of America, Inc. (“UPS”) respectfully submits this reply in support of its Motion to Amend the Notice of Opposition (the “Motion”). For the reasons set forth below and in Opposer’s Motion, the Motion should be granted.

Argument in Reply

I. **UPS Did Not Have Reason to Believe the Mark Is Descriptive Until April 20, 2009**

The Application at issue in this proceeding, Serial No. 77/176,134 for the mark HYBRID GREEN UPS, is an intent-to-use application. Therefore, at the time of UPS filed the Notice of Opposition, Applicant had not yet provided any specimen of use, which would have better shown the manner in which Applicant intended to use the mark. During discovery, UPS attempted to obtain information and documents regarding Applicant’s use of the mark, but none was available, apparently because Applicant had not yet used the mark. (Similarly, UPS could not

investigate Applicant's use of the mark through Internet research or other resources.) It was not until Applicant served its responses to Opposer's Requests for Admission Nos. 52-56 and Opposer's Responses to Interrogatory No. 3 that UPS could know that the mark, when used on or in connection with Applicant's goods, is merely descriptive of those goods and thus should be refused registration. See TMEP § 1209. Applicant's responses to these discovery requests, as shown on pages 7-12 of Applicant's Response in Opposition, indicate that HYBRID applies to the various goods offered under the mark, which are for more than one type of power output, and that GREEN shows the environmental friendliness of the goods.

As has been explained in Opposer's Motion to Amend the Notice of Opposition and Reply Brief in Support of Opposer's Motion to Extend the Testimony Periods, UPS did not receive Applicant's responses to its timely-filed discovery requests until April 20, 2009. Only at that time could the descriptiveness of the mark HYBRID GREEN UPS become known to UPS. This scenario -- in which a party becomes aware of additional grounds through the discovery process -- is precisely why amendments to pleadings are permitted.

II. UPS Acted to Amend the Notice Of Opposition in a Reasonable Time

Once UPS received Applicant's discovery responses, UPS conducted a reasoned analysis and it moved to amend the Notice of Opposition accordingly.

Applicant attempts to make much of the fact that UPS filed the motion on the last day of UPS's testimony period. As explained above, UPS filed its motion within a reasonable time after receiving and analyzing Applicant's discovery responses. Perhaps there would be an issue if the motion was filed after the expiration of UPS's testimony period or in Applicant's testimony period. Neither is the case here. Applicant has full notice of this one additional basis

of opposition before its testimony period opens, so Applicant is fully able to address this issue during its testimony period.

III. Applicant Will Not Be Prejudiced by an Amendment of the Notice of Opposition

Applicant will have a full opportunity to take testimony regarding the descriptiveness of its mark HYBRID GREEN UPS and will thus suffer no prejudice from the amendment. UPS did not learn of this additional basis until discovery was closed, so even if UPS had moved to amend the Notice of Opposition the very day it received the discovery responses, Applicant would be in the same procedural situation.

Applicant does not indicate how it will be prejudiced by an amendment of the Notice of Opposition. Rather, Applicant merely references its other registrations that feature HYBRID GREEN as elements and then claims that those other registrations will be affected if UPS is allowed to amend its Notice of Opposition. These other registrations, however, are not at issue in this proceeding. Amending the Notice of Opposition in this proceeding to include descriptiveness as a basis will not affect Applicant's other HYBRID GREEN registrations, and Applicant does not even attempt to explain how it will.

For the reasons set forth above and in Opposer's Motion, UPS respectfully requests that the Board grant its Motion.

Dated: July 27, 2009

By: /John P. Sheesley/

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UNITED PARCEL SERVICE OF
AMERICA, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Reply Brief in Support of Opposer's Motion to Amend was served this day via electronic mail, pursuant to agreement, addressed to:

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This 27th day of July, 2009.

/John P. Sheesley/

John P. Sheesley